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TALKDESK, INC.

11 UNITED STATES DISTRICT COURT
12 CENTRAL DISTRICT OF CALIFORNIA
13 WESTERN DIVISION
14

15 ANDREW PHAM, an individual,
16 Plaintiff,

17 v.

18 TALKDESK, INC., a Delaware
19 corporation,
20 Defendant.

Case No. 2:22-cv-05325-MCS-JPR;
2:22-cv-05961-MCS-JPR

**FIRST AMENDED STIPULATED
PROTECTIVE ORDER**

21 ANDREW PHAM, an individual,
22 Plaintiff,

23 v.

24 TALKDESK, INC., a Delaware
25 corporation,
26 Defendant.

1. INTRODUCTION

1.1 PURPOSES AND LIMITATIONS

Discovery in this action may involve production of confidential, proprietary, or private information for which special protection from public disclosure and from use for any purpose other than prosecuting this litigation may be warranted. Accordingly, the Parties hereby stipulate to and petition the Court to enter the following First Amended Stipulated Protective Order. The Parties acknowledge that this Order does not confer blanket protections on all disclosures or responses to discovery and that the protection it affords from public disclosure and use extends only to the limited information or items that are entitled to confidential treatment under the applicable legal principles. The Parties further acknowledge, as set forth in Section 12.3 below, that this Order does not entitle them to file Protected Material under seal; Civil Local Rule 79-5 sets forth the procedures that must be followed and the standards that will be applied when a Party seeks permission from the Court to file material under seal.

1.2 GOOD CAUSE STATEMENT

This Action may involve sensitive confidential information, including confidential business and financial information and privileged communications between attorneys and clients. Mr. Pham was Talkdesk's "SVP, Business & Counsel" from June 2019 to June 2020.

In his claims, Mr. Pham asserts that Talkdesk wrongfully terminated him because he refused to engage in numerous unlawful actions requested by Talkdesk employees. *Andrew Pham v. Talkdesk, Inc.*, C.A. No. 2:22-cv-05325-MCS-JPR (C.D. Cal.) ("*Pham v. Talkdesk*") at ECF No. 43 (Pham Second Amended Complaint). Mr. Pham further contends that, because of his refusal, Talkdesk believed that Mr. Pham disclosed or might disclose Talkdesk's nefarious requests to persons with authority or ability to investigate Talkdesk. *Id.* Mr. Pham further contends that, based on this belief, Talkdesk terminated Mr. Pham in direct

1 violation of Cal. Lab. Code § 1102.5 (Violation of Whistleblower Protection). *Id.*
 2 In its defense, Talkdesk asserts that Mr. Pham was Talkdesk’s most senior attorney
 3 and that the conversations he was privy to were privileged communications that (a)
 4 cannot be the basis for an attorney claim for wrongful termination or whistleblower
 5 violations and, in any event, (b) do not constitute protected activity. *See, e.g.,*
 6 *Pham v. Talkdesk* at ECF No. 51 (Talkdesk Motion to Dismiss Second Amended
 7 Complaint). Information relevant to these claims and defenses may include
 8 privileged information that Mr. Pham learned while he was an attorney for
 9 Talkdesk.

10 In its own affirmative claims, Talkdesk asserts (among other things) that Mr.
 11 Pham is using sensitive, confidential, proprietary, and privileged information that
 12 he learned while working as Talkdesk’s most senior attorney to extort Talkdesk for
 13 additional compensation that he is not entitled to. *See, e.g., Talkdesk, Inc. v.*
 14 *Andrew Pham*, C.A. No. 2:22-cv-05964-MCS-JPR (C.D. Cal.) (“*Talkdesk v.*
 15 *Pham*”) at ECF No. 1 (Talkdesk Complaint). Talkdesk contends that these claims
 16 and defenses will likewise involve discovery into privileged information that Mr.
 17 Pham learned while he was acting as Talkdesk’s attorney and his use of that
 18 information after he departed. In his defense, Mr. Pham asserts that Talkdesk’s
 19 claims are devoid of any factual basis and there is *no evidence* that Mr. Pham
 20 misused Talkdesk’s information in any way. *See, e.g., Talkdesk v. Pham* at ECF
 21 No. 20 (Pham’s Opposition to Talkdesk’s Motion for Preliminary Injunction). Mr.
 22 Pham further contends that the attorney-client privilege is not implicated because
 23 Mr. Pham’s “attorney role” at Talkdesk was limited. *Id.* According to Mr. Pham,
 24 most communications made to him were in his non-lawyer roles and were not
 25 seeking legal advice. *Id.*

26 This Court has already ordered Mr. Pham to seal portions of this pleadings
 27 containing potentially privileged information. *Pham v. Talkdesk*, ECF No. 12
 28 (Order to Seal Potentially Privileged Information in Pleadings). Moreover, in

1 addition to being privileged, much of the information in this action may constitute
 2 commercially sensitive information that is subject to contractual confidentiality
 3 obligations.

4 2. DEFINITIONS

5 2.1 Action: These consolidated actions of *Andrew Pham v. Talkdesk, Inc.*,
 6 C.A. No. 2:22-cv-05325-MCS-JPR (C.D. Cal.) and *Talkdesk, Inc. v. Andrew Pham*,
 7 C.A. No. 2:22-cv-05964-MCS-JPR (C.D. Cal.).

8 2.2 Challenging Party: a Party or Nonparty that challenges the designation
 9 of information or items under this Order.

10 2.3 “CONFIDENTIAL” Information or Items: information (regardless of
 11 how it is generated, stored, or maintained) or tangible things that qualify for
 12 protection under Federal Rule of Civil Procedure 26(c) and as specified above in
 13 the Good Cause Statement.

14 2.4 “OUTSIDE COUNSEL OF RECORD EYES ONLY” Information or
 15 Items: information (regardless of how it is generated, stored, or maintained) or
 16 tangible things that qualify for protection under Federal Rule of Civil Procedure
 17 26(c), as specified above in the Good Cause Statement, and contains extremely
 18 sensitive financial information.

19 2.5 Counsel: Outside Counsel of Record and House Counsel (as well as
 20 their support staff).

21 2.6 Designating Party: a Party or Nonparty that designates information or
 22 items that it produces in disclosures or in responses to discovery as
 23 “CONFIDENTIAL” or “OUTSIDE COUNSEL OF RECORD EYES ONLY.”

24 2.7 Disclosure or Discovery Material: all items or information, regardless
 25 of the medium or manner in which it is generated, stored, or maintained (including,
 26 among other things, testimony, transcripts, and tangible things), that are produced
 27 or generated in disclosures or responses to discovery in this matter.
 28

1 2.8 Expert: a person with specialized knowledge or experience in a matter
2 pertinent to the litigation who has been retained by a Party or its counsel to serve as
3 an expert witness or as a consultant in this action.

4 2.9 House Counsel: attorneys who are employees of a Party to this
5 Action. House Counsel does not include Outside Counsel of Record or any other
6 outside counsel.

7 2.10 Nonparty: any natural person, partnership, corporation, association, or
8 other legal entity not named as a Party to this action.

9 2.11 Outside Counsel of Record: attorneys who are not employees of a
10 Party to this Action but are retained to represent or advise a Party and have
11 appeared in this Action on behalf of that Party or are affiliated with a law firm that
12 has appeared on behalf of that Party, including support staff.

13 2.12 Party: any Party to this Action, including all of its officers, directors,
14 employees, consultants, retained experts, and Outside Counsel of Record (and their
15 support staffs).

16 2.13 Producing Party: a Party or Nonparty that produces Disclosure or
17 Discovery Material in this Action.

18 2.14 Professional Vendors: persons or entities that provide litigation
19 support services (for example, photocopying, videotaping, translating, preparing
20 exhibits or demonstrations, and organizing, storing, or retrieving data in any form
21 or medium) and their employees and subcontractors.

22 2.15 Protected Material: any Disclosure or Discovery Material that is
23 designated as “CONFIDENTIAL” or “OUTSIDE COUNSEL OF RECORD EYES
24 ONLY.”

25 2.16 Receiving Party: a Party that receives Disclosure or Discovery
26 Material from a Producing Party.

1 3. SCOPE

2 The protections conferred by this Stipulation and Order cover not only
 3 Protected Material (as defined above) but also any information copied or extracted
 4 from Protected Material; all copies, excerpts, summaries, or compilations of
 5 Protected Material; and any testimony, conversations, or presentations by Parties or
 6 their Counsel that might reveal Protected Material.

7 Any use of Protected Material at trial will be governed by the orders of the
 8 trial judge. This Order does not govern the use of Protected Material at trial.

9 4. DURATION

10 Once a case proceeds to trial, all the information that was designated as
 11 confidential or maintained under this Order and that is sought to be introduced or
 12 used at trial becomes public and will be presumptively available to all members of
 13 the public, including the press, unless the trial judge finds compelling reasons to
 14 proceed otherwise. See Kamakana v. City & Cnty. of Honolulu, 447 F.3d 1172,
 15 1180-81 (9th Cir. 2006) (distinguishing “good cause” showing for sealing
 16 documents produced in discovery from “compelling reasons” needed for merits-
 17 related documents). Accordingly, the terms of this Order do not extend to
 18 documents introduced or used at trial unless the designating party separately
 19 requests and obtains a Court order sealing that portion of the trial record. This
 20 order shall continue to apply to materials not introduced or used at trial until a
 21 Designating Party agrees otherwise in writing or a court order otherwise directs.

22 5. DESIGNATING PROTECTED MATERIAL

23 5.1 Each Party or Nonparty that designates information or items for
 24 protection under this Order must take care to limit any such designation to specific
 25 material that qualifies under the appropriate standards. The Designating Party must
 26 designate for protection only those parts of material, documents, items, or oral or
 27 written communications that qualify so that other portions of the material,
 28

1 documents, items, or communications for which protection is not warranted are not
2 swept unjustifiably within the ambit of this Order.

3 Mass, indiscriminate, or routinized designations are prohibited. Designations
4 that are shown to be clearly unjustified or that have been made for an improper
5 purpose (for example, to unnecessarily encumber the case-development process or
6 to impose unnecessary expenses and burdens on other parties) may expose the
7 Designating Party to sanctions.

8 If it comes to a Designating Party's attention that information or items it
9 designated for protection do not qualify for that level of protection, that Designating
10 Party must promptly notify all other Parties that it is withdrawing the inapplicable
11 designation.

12 5.2 Except as otherwise provided in this Order, Disclosure or Discovery
13 Material that qualifies for protection under this Order must be clearly so designated
14 before the material is disclosed or produced.

15 Designation in conformity with this Order requires the following:

16 (a) for information in documentary form (for example, paper or electronic
17 documents but excluding transcripts of depositions or other pretrial or trial
18 proceedings), the Producing Party must affix at a minimum the legend
19 "CONFIDENTIAL" or "OUTSIDE COUNSEL OF RECORD EYES ONLY," as
20 applicable, to each page that contains Protected Material. If only a portion or
21 portions of the material on a page qualify for protection, the Producing Party must
22 clearly identify the protected portion(s) (for example, by making appropriate
23 markings in the margins).

24 A Party or Nonparty that makes original documents available for
25 inspection need not designate them for protection until after the inspecting Party
26 has indicated which documents it would like copied and produced. During the
27 inspection and before the designation, all material made available for inspection
28 must be treated as Protected Material. After the inspecting Party has identified the

documents it wants copied and produced, the Producing Party must determine which documents, or portions thereof, qualify for protection under this Order. Then, before producing the specified documents, the Producing Party must affix the applicable legend to each page that contains Protected Material. If only a portion or portions of the material on a page qualify for protection, the Producing Party also must clearly identify the protected portion(s) (for example, by making appropriate markings in the margins).

(b) for testimony given in depositions, the Deposition Transcript in its entirety will be presumed CONFIDENTIAL until 28 days after the final transcript is delivered by the court reporter to the parties, or upon agreement of the parties. With 28 days after delivery of the final transcript, the Designating Party must serve by email to all parties a copy of the transcript identifying the Disclosure or Discovery Material that is protected.

(c) for information produced in some form other than documentary and for any other tangible items, the Producing Party must affix in a prominent place on the exterior of the container or containers in which the information is stored the legend “CONFIDENTIAL” or “OUTSIDE COUNSEL OF RECORD EYES ONLY,” as applicable. If only a portion or portions of the information warrant protection, the Producing Party, to the extent practicable, must identify the protected portion(s).

5.3 If timely corrected, an inadvertent failure to designate qualified information or items does not, standing alone, waive the Designating Party’s right to secure protection under this Order for that material. On timely correction of a designation, the Receiving Party must make reasonable efforts to assure that the material is treated in accordance with the provisions of this Order.

6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

6.1 Any Party or Nonparty may challenge a designation of confidentiality at any time consistent with the Court’s scheduling order.

6.2 The Challenging Party must initiate the dispute-resolution process

1 (and, if necessary, file a discovery motion) under Local Rule 37.

2 6.3 The burden of persuasion in any such proceeding is on the Designating
3 Party. Frivolous challenges, and those made for an improper purpose (for example,
4 to harass or impose unnecessary expenses and burdens on other parties), may
5 expose the Challenging Party to sanctions. Unless the Designating Party has
6 waived or withdrawn the confidentiality designation, all parties must continue to
7 afford the material in question the level of protection to which it is entitled under
8 the Producing Party's designation until the Court rules on the challenge.

9 7. ACCESS TO AND USE OF PROTECTED MATERIAL

10 7.1 A Receiving Party may use Protected Material that is disclosed or
11 produced by another Party or by a Nonparty in connection with this Action only for
12 prosecuting, defending, or attempting to settle this Action. Such Protected Material
13 may be disclosed only to the categories of people and under the conditions
14 described in this Order. When the Action has been terminated, a Receiving Party
15 must comply with the provisions of Section 13 below (FINAL DISPOSITION).

16 Protected Material must be stored and maintained by a Receiving Party at a
17 location and in a manner sufficiently secure to ensure that access is limited to the
18 people authorized under this Order.

19 7.2 Unless otherwise ordered by the Court or permitted in writing by the
20 Designating Party, a Receiving Party may disclose any information or item
21 designated "CONFIDENTIAL" only to the following people:

22 (a) the Receiving Party's Outside Counsel of Record in this Action, as
23 well as employees of that Outside Counsel of Record to whom it is reasonably
24 necessary to disclose the information for this Action;

25 (b) the officers, directors, and employees (including House Counsel) of
26 the Receiving Party to whom disclosure is reasonably necessary for this Action;

(c) Experts (as defined in this Order) of the Receiving Party to whom disclosure is reasonably necessary for this Action and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

(d) the Court and its personnel;

(e) court reporters and their staff;

(f) professional jury or trial consultants, mock jurors, and Professional Vendors to whom disclosure is reasonably necessary for this Action and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

(g) the author or recipient of a document containing the information or a custodian or other person who otherwise possessed or knew the information;

(h) during their depositions, witnesses and attorneys for witnesses to whom disclosure is reasonably necessary, provided that the deposing party requests that the witness sign the form attached as Exhibit A hereto and the witnesses will not be permitted to keep any Protected Material unless they sign the form, unless otherwise agreed by the Designating Party or ordered by the Court. Pages of transcribed deposition testimony or exhibits to depositions that reveal Protected Material may be separately bound by the court reporter and may not be disclosed to anyone except as permitted under this Order; and

(i) any mediator or settlement officer, and their supporting personnel, mutually agreed on by any of the Parties engaged in settlement discussions or appointed by the Court.

7.3 Unless otherwise ordered by the Court or permitted in writing by the Designating Party, a Receiving Party may disclose any information or item designated “OUTSIDE COUNSEL OF RECORD EYES ONLY” only to the following people:

(a) the Receiving Party’s Outside Counsel of Record in this Action, including employees of that Outside Counsel of Record to whom it is reasonably necessary to disclose the information for this Action.

(b) Experts (as defined in this Order) of the Receiving Party to whom disclosure is reasonably necessary for this Action and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

(c) the Court and its personnel;

(d) court reporters and their staff;

(e) professional jury or trial consultants, mock jurors, and Professional Vendors to whom disclosure is reasonably necessary for this Action and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

(f) the author or recipient of a document containing the information or a custodian or other person who otherwise possessed or knew the information; and

(g) any mediator or settlement officer, and their supporting personnel, mutually agreed on by any of the Parties engaged in settlement discussions or appointed by the Court.

8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER LITIGATION

If a Party is served with a subpoena or a court order issued in other litigation that compels disclosure of any information or items designated in this Action as Protected Material, that Party must

(a) promptly notify in writing the Designating Party. Such notification must include a copy of the subpoena or court order unless prohibited by law;

(b) promptly notify in writing the party who caused the subpoena or order to issue in the other litigation that some or all of the material covered by the subpoena or order is subject to this Protective Order. Such notification must include a copy of this Order; and

(c) cooperate with respect to all reasonable procedures sought to be pursued by the Designating Party whose Protected Material may be affected.

If the Designating Party timely seeks a protective order, the Party served with the subpoena or court order should not produce any information designated in this

1 action as Protected Material before a determination on the protective-order request
 2 by the relevant court unless the Party has obtained the Designating Party's
 3 permission. The Designating Party bears the burden and expense of seeking
 4 protection of its Protected Material, and nothing in these provisions should be
 5 construed as authorizing or encouraging a Receiving Party in this Action to disobey
 6 a lawful directive from another court.

7 9. A NONPARTY'S PROTECTED MATERIAL SOUGHT TO BE
 8 PRODUCED IN THIS LITIGATION

9 (a) The terms of this Order are applicable to information produced by a
 10 Nonparty in this Action and designated as Protected Material. Such information is
 11 protected by the remedies and relief provided by this Order. Nothing in these
 12 provisions should be construed as prohibiting a Nonparty from seeking additional
 13 protections.

14 (b) In the event that a Party is required by a valid discovery request to
 15 produce a Nonparty's Protected Material in its possession and the Party is subject to
 16 an agreement with the Nonparty not to produce the Nonparty's Protected Material,
 17 then the Party must

18 (1) promptly notify in writing the Requesting Party and the Nonparty
 19 that some or all of the information requested is subject to a confidentiality
 20 agreement with a Nonparty;

21 (2) promptly provide the Nonparty with a copy of this Order, the
 22 relevant discovery request(s), and a reasonably specific description of the
 23 information requested; and

24 (3) make the information requested available for inspection by the
 25 Nonparty, if requested.

26 (c) If the Nonparty fails to seek a protective order within 21 days of
 27 receiving the notice and accompanying information, the Receiving Party may
 28 produce the Nonparty's Protected Material responsive to the discovery request. If

1 the Nonparty timely seeks a protective order, the Receiving Party must not produce
2 any information in its possession or control that is subject to the confidentiality
3 agreement with the Nonparty before a ruling on the protective-order request.
4 Absent a court order to the contrary, the Nonparty must bear the burden and
5 expense of seeking protection of its Protected Material.

6 10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

7 If a Receiving Party learns that by inadvertence or otherwise, it has disclosed
8 Protected Material to any person or in any circumstance not authorized under this
9 Order, the Receiving Party must immediately notify the Designating Party in
10 writing of the unauthorized disclosures, use its best efforts to retrieve all
11 unauthorized copies of the Protected Material, inform the person or people to whom
12 unauthorized disclosures were made of the terms of this Order, and ask that person
13 or people to execute the “Acknowledgment and Agreement to Be Bound” that is
14 attached hereto as Exhibit A.

15 11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE
16 PROTECTED MATERIAL

17 When a Producing Party gives notice to Receiving Parties that certain
18 inadvertently produced material is subject to a claim of privilege or other
19 protection, the obligations of the Receiving Parties are those set forth in Federal
20 Rule of Civil Procedure 26(b)(5)(B).

21 12. MISCELLANEOUS

22 12.1 Nothing in this Order abridges the right of any person to seek its
23 modification by the Court.

24 12.2 By stipulating to the entry of this Order, no Party waives any right it
25 otherwise would have to object to disclosing or producing any information or item
26 on any ground not addressed in this Order. Similarly, no Party waives any right to
27 object on any ground to use in evidence of any of the material covered by this
28 Order.

1 12.3 A Party that seeks to file under seal any Protected Material must
2 comply with Civil Local Rule 79-5. Protected Material may be filed under seal only
3 pursuant to a court order authorizing the sealing of the specific Protected Material
4 at issue. If a Party's request to file Protected Material under seal is denied, then the
5 Receiving Party may file the information in the public record unless otherwise
6 instructed by the Court.

7 13. FINAL DISPOSITION

8 After the final disposition of this Action, as defined in paragraph 4, within 60
9 days of a written request by the Designating Party, each Receiving Party must
10 return all Protected Material to the Producing Party or destroy such material. As
11 used in this subdivision, "all Protected Material" includes all copies, abstracts,
12 compilations, summaries, and any other format reproducing or capturing any of the
13 Protected Material. Whether the Protected Material is returned or destroyed, the
14 Receiving Party must submit a written certification to the Producing Party (and, if
15 not the same person or entity, to the Designating Party) by the 60-day deadline that
16 identifies (by category, when appropriate) all the Protected Material that was
17 returned or destroyed and affirms that the Receiving Party has not retained any
18 copies, abstracts, compilations, summaries, or any other format reproducing or
19 capturing any of the Protected Material. Notwithstanding this provision, Counsel
20 are entitled to retain an archival copy of all pleadings; motion papers; trial,
21 deposition, and hearing transcripts; legal memoranda; correspondence; deposition
22 and trial exhibits; expert reports; attorney work product; and consultant and expert
23 work product even if such materials contain Protected Material. Any such archival
24 copies that contain or constitute Protected Material remain subject to this Order as
25 set forth in Section 4 (DURATION).

26 14. SANCTIONS

27

28

1 Any willful violation of this Order may be punished by civil or criminal
2 contempt, financial or evidentiary sanctions, reference to disciplinary authorities, or
3 other appropriate action at the discretion of the Court.

4
5 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

6
7 DATED: _June 28, 2023

/s/ Stephen Lobbin
Stephen Lobbin
Attorneys for Plaintiff, Andrew Pham

8
9
10 DATED: June 28, 2023

/s/ Amy Van Zant
Amy Van Zant
Attorneys for Defendant, Talkdesk, Inc.

CIVIL LOCAL RULE 5-4.3.4 ATTESTATION

I hereby attest that all other signatories listed, and on whose behalf the filing is submitted, concur in the filing's content and have authorized the filing.

DATED: _____, 2023

/s/ Amy Van Zant

Amy Van Zant

Attorneys for Defendant, Talkdesk, Inc.

PURSUANT TO STIPULATION, IT IS SO ORDERED.

DATED: 7/3/2023



JEAN P. ROSENBLUTH

U.S. MAGISTRATE JUDGE

EXHIBIT AACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____ **[full name]**, of _____
[full address], declare under penalty of perjury that I have read in its entirety and
understand the Stipulated Protective Order that was issued by the U.S. District
Court for the Central District of California on _____ **[date]** in the
consolidated cases of *Andrew Pham v. Talkdesk, Inc.*, C.A. No. 2:22-cv-05325-
MCS-JPR (C.D. Cal.) and *Talkdesk, Inc. v. Andrew Pham*, C.A. No. 2:22-cv-
05964-MCS-JPR (C.D. Cal.). I agree to comply with and to be bound by all terms
of this Stipulated Protective Order, and I understand and acknowledge that failure
to so comply could expose me to sanctions and punishment, including contempt. I
solemnly promise that I will not disclose in any manner any information or item
that is subject to this Stipulated Protective Order to any person or entity except in
strict compliance with the provisions of this Order.

I further agree to submit to the jurisdiction of the U.S. District Court for the
Central District of California for the purpose of enforcing the terms of this
Stipulated Protective Order, even if such enforcement proceedings occur after
termination of this action. I hereby appoint _____ **[full**
name] of _____ **[full address and**
telephone number] as my California agent for service of process in connection
with this action or any proceedings related to enforcement of this Stipulated
Protective Order.

Date: _____

City and State where signed: _____

Printed name: _____

Signature: _____